

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

**REPLY REGARDING ADMISSIBILITY OF PLAINTIFFS’
JUDICIAL ADMISSIONS CONCERNING MANUFACTURER CONDUCT**

Plaintiffs’ response to Defendants’ motion is meritless. Defendants’ memorandum established—and Plaintiffs do not dispute—that allegations in the Complaint are judicial admissions by Plaintiffs—*a party-opponent*—and therefore not hearsay. Defendants are therefore entitled to rely on those specific admissions. But that in no way gives Plaintiffs the right or ability to rely on their own allegations as substantive evidence, whether for “completeness” or any other reason.¹ As to Plaintiffs, their allegations are and remain inadmissible hearsay, not admissible

¹ Though Plaintiffs allege that distributors acted “in concert” with manufacturers and pharmacies, Opp. at 1, that is both irrelevant to the issues raised in this motion and unsupported by the record

evidence. Fed. R. Evid. 801, 802; *see, e.g., Cambridge Cap. Grp. v. Pill*, 20 F. App'x 121, 124–25 (4th Cir. 2001) (“Allegations contained in a complaint are not evidence....”); *Ben-Tom Supply Co. v. V. N. Green & Co.*, 338 F. Supp. 59, 64 (S.D. W. Va. 1971) (“It is, of course, settled beyond dispute that statements in a party’s pleading may constitute an admission *as to that party*.”). The Court therefore should take judicial notice of the admissions identified by Defendants, but should not admit into evidence or consider the additional paragraphs of the Complaint identified in Plaintiffs’ response.

evidence. Indeed, Plaintiffs put on absolutely no evidence that Defendants acted in concert with manufacturers, pharmacies, each other, or anyone else.

Dated: August 5, 2021

Respectfully Submitted,

McKesson Corporation

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 5th day of August, 2021, the foregoing Memorandum was served using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

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